

**Before the  
Federal Communications Commission**  
Washington, D.C. 20554

In the Matter of	)	
	)	
8YY Access Charge Reform	)	WCB Docket No. 18-156
	)	

**REPLY COMMENTS OF TELIAx, INC. AND PEERLESS NETWORK, INC.**

Robert H. Jackson  
Alexander I. Schneider  
Marashlian & Donahue, PLLC  
1420 Spring Hill Road  
Suite 401  
Tysons, VA 22102  
703-714-1300  
rhj@commlawgroup.com  
ais@commlawgroup.com

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**I. INTRODUCTION AND SUMMARY**

Teliax, Inc. ("Teliax") and Peerless Network, Inc. ("Peerless," collectively "T&P") through their counsel, respectfully submit reply comments to the Federal Communications Commission ("Commission" or "FCC") in response to the Further Notice of Proposed Rulemaking in 8YY Access Charge Reform, WCB Docket No. 18-156, FCC 18-76 (rel. June 5, 2018) ("*FNPRM*").

The comments of AT&T and Verizon, when coupled with their years-long campaigns of refusing to pay lawful tariff charges through self-help schemes, display a lack of candor and credibility. As such the Commission needs to give them no weight. AT&T's and Verizon's claims that competitive local exchange carriers ("CLECs") benchmark to incumbent local exchange carriers ("ILECs") with high rates are unsubstantiated. Similarly, Verizon's claim regarding Teliax's operations seems to be intentionally misleading.

The record before the Commission does not support mandatory bill and keep ("B&K") for 8YY originating Access Services. Evidence in the record shows the *2011 Transformation Order*<sup>1</sup> failed to produce its predicted result – lower rates for consumers. Because of the IXCs' unsupported claims, the Commission needs to open an investigation of the big interexchange carriers ("IXCs") and obtain

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<sup>1</sup> *Connect America Fund*, Report & Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) ("*2011 Transformation Order*") (subsequent history omitted).

peer-reviewed evidence. Subjects for that review should include interconnection, robocalls, toll free numbering resources, the conversion to all-IP networks, why wireless carriers do not perform 8YY database queries ("DBQs") and the failure of access reform to reduce billing disputes and litigation. And a key public policy issue for investigation is the implication of making end user customers pay for toll free calls, something that seems designed to enrich AT&T and Verizon.

The push by some parties for a single nationwide DBQ rate is neither supported by evidence nor in the public interest. There has been no evidence that costs and demand are uniform among carriers operating across the nation. In the event the FCC were to impose further economic regulation on DBQs, such regulation should consist of volume discounts, as explained herein. Further, there are valid reasons why more than one DBQ occurs (and should occur on a single call). Providers of wholesale 8YY origination service, including tandem operators, are necessary for the operation of the service.

The IXC's cry of "fraud" and "robocalls" is an empty shibboleth designed to defraud other carriers of valid charges for services rendered. If fraud actually existed at levels claimed by the IXCs, why is toll free service seemingly growing so rapidly? If the FCC truly wants to reduce 8YY fraud, it must adopt rules that require IXCs to report specifics about fraudulent and robo-dialed calls to upstream carriers and for those upstream carriers to work with reporting carriers to identify; investigate; and, if appropriate, block bad calls, not attack one rate that, if reduced, will likely not have any impact on the fight against fraud.

Much of the real fraud in connection with 8YY calls occurs by the IXCs trying to obtain free Access Service. When the facts are exposed, they show AT&T and Verizon want CLECs to deliver 8YY calls the IXCs claim are fraudulent. This is part of schemes to avoid applicable rates and charges for calls.

## II. DISCUSSION

### A. Candor & Credibility

The comments of AT&T and Verizon, when coupled with their years-long campaigns of refusing to pay lawful tariff charges through self-help schemes, display a lack of candor and credibility. As such the Commission should disregard them. T&P do not make this statement easily. Participation in federal rulemaking proceedings involves First Amendment rights—both free speech and the right to petition government for the redress of grievances. Moreover, reasonable people can disagree over facts, especially when those facts involve a complex and technical industry like telecommunications. Disputes over the meaning of statutes, regulations and cases also arise. And finally, people on all sides of an issue can make mistakes and misunderstand the true details. However, there are limits to what would be considered reasonable, which both AT&T and Verizon have crossed in their advocacy in favor of rules that allow them free use of other carriers' networks and that would force consumers to pay to make toll free calls.

A fair reading of Commission cases demonstrates credibility and candor often play an important role in administrative proceedings. Credibility and candor were key factors in the recent FCC decision to refer the proposed Sinclair Broadcast Group, Inc. and Tribune Media Company to an administrative law judge.<sup>2</sup> Every attorney or lobbyist who has advocated before the Commission has certainly been told that the Commission is a small agency that depends on the candor of those who appear before it in all matters, including rulemaking dockets.

Despite the importance of candor to the FCC's decision-making process, examples from AT&T's and Verizon's filings display a total lack of candor and credibility.

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<sup>2</sup> *Applications of Tribune Media Company (Transferor) and Sinclair Broadcast Group, Inc. (Transferee) For Transfer of Control of Tribune Media Company and Certain Subsidiaries, WDCW(TV) et al. and For Assignment of Certain Licenses from Tribune Media Company and Certain Subsidiaries*, Hearing Designation Order, 2018 Comm. Reg. (P&F) 75 (2018).

**1. AT&T's Claim that CLECs Benchmark to LECs with High Rates is Unsubstantiated**

AT&T's comments include:

Originating access charges for 8YY calls facilitate abuse of the CLEC benchmarking rule. In recent years, CLECs have set themselves up as 8YY "aggregators," agreeing to handle 8YY calls from many originating providers. The current rules give CLECs an incentive to set up shop in areas where they can benchmark their originating access charges to high incumbent LEC rates, thereby artificially inflating their charges relative to what the provider would have been able to charge in the incumbent LEC area where the call was actually placed. In many of these schemes, the CLEC aggregator agrees to pay a portion of its access revenues to the originating provider.<sup>3</sup>

AT&T's comments cite to the *FNPRM*, which references a similar unsupported allegation made by Verizon and AT&T in another proceeding. The earlier allegations are not bolstered by any hard evidence of an analysis of billing records, a statistically valid sample of the same, or representative examples of CLEC that has done what AT&T and Verizon claim.<sup>4</sup> Instead of providing any hard evidence, AT&T is telling the Commission to conclude that CLECs providing wholesale 8YY origination services have set up shop in markets with high access charges only because AT&T and Verizon said this was true back in 2017. The bottom line is that AT&T's recent allegations are supported by nothing

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<sup>3</sup>AT&T Comments at 8, (footnote omitted).

<sup>4</sup> *Id.*, at n.13, citing *FNPRM* at ¶ 25, which, in turn, references AT&T comments and ex parte filings from both AT&T and Verizon (n.75, filed last year in response to "Parties Asked to Refresh the Record Regarding 8YY Access Charge Reform," Public Notice, 32 FCC Rcd. 5117 (2017)). The specific filings are Verizon Nov. 6, 2017 *Ex Parte* at 1; AT&T Comments at 7; AT&T Nov. 9, 2017 *Ex Parte*, Attach. at 2.

beyond more of AT&T's (and Verizon's) previously unsupported allegations.<sup>5</sup> This is simply not credible evidence.<sup>6</sup>

Moreover, an examination of real facts show the absurdity of AT&T's claim that all or most toll free aggregators operate in high-priced markets. Both T&P are successful providers of wholesale toll free origination service. Teliix performs its services from Denver, Colorado, which has a MSA population of approximately 2.8 million. Teliix benchmarks applicable rates to CenturyLink, hardly a NECA traffic sensitive pool member.

Peerless has major network facilities in Chicago (MSA population of 9.14 million) and in Denver. Moreover, Peerless rates the calls where dialed—the very practice AT&T apparently views as required.<sup>7</sup>

Not only does AT&T fail to provide any hard evidence proving its allegation that 8YY aggregation occurs in high-cost markets, but also it ignores the fact that three of the most successful wholesale 8YY origination service providers operate in large metropolitan markets (Chicago, Denver and Los Angeles). Further, one of these aggregators, Peerless, follows the very billing practice demanded by AT&T—billing where the call is dialed. AT&T's claims remain unqualified and leap

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<sup>5</sup> For example, in AT&T's November 9, 2017 *Ex Parte*, Attach. at 2., AT&T's diagram shows call flows and related access charge billing for toll free calls that are dialed in California and transmitted to Colorado where a database query is performed and originating end office apparently applied, suggesting (based on a fair reading of the notice of *ex parte*) AT&T is billed higher rates than it would have been billed if the calls had been switched and queried in Colorado. But AT&T provides absolutely no rate comparisons that support its claim. Moreover, even in the event AT&T would have included rates, the comparison remains hypothetical and self-serving because AT&T did not provide representative call and billing records or a statistically valid traffic study.

<sup>6</sup> The Nebraska Rural Independent Companies ("NRIC") explained at great length why the Commission has insufficient facts before it to make findings sufficient to support new rules that would exempt IXCs from paying access charges for toll free calls and forcing consumers to pay for a service that has been free to them for more than 50 years. NRIC pointed that much of the "evidence" supporting conclusions that "that 'some LECs are engaged in schemes to overcharge' for certain originating 8YY traffic" and further claiming that "'arbitrage schemes are increasingly shifting to 8YY'" are nothing more than unsupported allegations in earlier AT&T comments. NRIC comments at 6 (internal references omitted).

<sup>7</sup> O1 is another major provider of wholesale toll free origination service is based in California. <http://www.o1.com/about-us/> (September 16, 2018). On information and belief, its switch is located in Los Angeles (MSA population of 13.31 million).

beyond exaggeration to being out-and-out misleading. There is simply no evidence in the record to back up AT&T's claims that carriers offering wholesale 8YY call origination services do so in rural markets.

## **2. Verizon's Claim that 8YY Access Benchmarking Occurs in Higher-Cost Markets Is Unsubstantiated**

Verizon's November 6, 2017 *ex parte* filing in the 8YY Access Record Refresh proceeding<sup>8</sup> that is being used to support its current allegation that benchmarking occurs in high-cost markets is also unsubstantiated and, thus, misleading. Verizon's cover letter states, in applicable part:

In one scheme, a LEC aggregates 8YY traffic from VoIP providers, wireless carriers, and other LECs across a wide area. Rather than benchmark its originating tandem switched transport rates to the rates tariffed by the incumbent LEC in the area where the call originated, the CLEC bills the higher rates tariffed by the incumbent LEC in the area where the call is handed off to the IXC.<sup>9</sup>

Verizon purports to support this claim by showing a call flow and billing diagram that compares benchmarked tandem rates in California and Arkansas to benchmarked tandem rates in Colorado. However, Verizon fails to show how these rates apply to actual call and billing records or a statistically valid traffic study. Comparisons of hypothetical calls does not prove anything in this instance.

On the other hand, Teliax examined call and billing records and compared the rates it billed in Colorado (originating end office, facility port and DBQ charges) to the rates that would have been

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<sup>8</sup> Public Notice, "Parties Asked to Refresh the Record Regarding 8YY Access Charge Reform," WC Docket Nos. 10-90 and 07-135; CC Docket No. 01-92, DA 17-631 (rel. June 29, 2017) ("8YY Refresh").

<sup>9</sup> Not surprisingly, Verizon's advocacy does not address the *ARCO* and *Heritage Village* cases that held a LEC provides service where its switch is located and not where the end user customer dials a call. *Atlantic Richfield Co.*, 59 Rad. Reg. 2d (P&F) 417 (Common Carrier Bureau 1985), *app. for rev. denied*, 3 FCC Rcd 3089 at ¶ 22 (1988) ("*ARCO*") (affirming Atlantic Richfield's right to interconnect at any point it deems beneficial so long as there is no technical harm to the telephone system and/or economic impact which adversely affects the ability of a carrier adequately to serve the public.). *Arco* was affirmed in *Public Utility Comm'n of Texas v. FCC*, 886 F.2d 1325 (D.C. Cir. 1989). See also, *Expanded Interconnection with Local Telephone Company Facilities*, 9 FCC Rcd 5154, at ¶ 19, n.41 (1994).

*Petition of Heritage Village Church and Missionary Fellowship, Inc.; For emergency relief with respect to PBX interconnection to telephone service of Southern Bell Tel. & Tel. Co.*, 88 FCC 2d 1436 at ¶¶ 14-15 (1982) ("*Heritage Village*"), *aff'd Fort Mill Telephone Co. v. FCC*, 719 F.2d 89, 91-92 (4<sup>th</sup> Cir. 1983.)



billed for the same calls in the actual exchanges where the calls originated. Of course, those calls were dialed throughout the United States. This study showed that Teliax's rates in Colorado were lower than the rates in all other locations and its total billings were lower as well. In the near term, Teliax will file this study with the Commission as proprietary information not subject to public disclosure.

Before the Commission decides 8YY access reform, it should direct AT&T and Verizon to file similar studies and invite other participating parties to prepare and make similar filings. Only after a review of actual and representative data can the FCC make decisions about access reform that meets legal standards.<sup>10</sup>

### **3. Verizon's Claim Regarding Teliax's Operations Seems to be Intentionally Misleading**

In what appears to be an obvious attempt to mislead the Commission, Verizon crafts an argument in favor of B&K by mixing up concepts to cause confusion and sprinkling in terms like "robocalling", "fraud", and "arbitrage" that trigger a negative reaction, while avoiding the actual facts. In its advocacy in favor of bringing originating access to mandatory B&K, Verizon states: The schemes [to maximize access revenues] typically involve LECs that purchase, transmit, and bill long-distance carriers for robocalls and other fraudulent 8YY traffic."<sup>11</sup> After taking an expected swat at the Commission's "VoIP Symmetry Rule,"<sup>12</sup> Verizon alleges that "LECs acquire 8YY calls from their ostensible wholesale customers to exploit arbitrage opportunities."<sup>13</sup> As an example, Verizon states the following about Teliax. "For example, Teliax's 'wholesale customer[s do not] make any payment

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<sup>10</sup> NRIC Comments at 6, n.16.

<sup>11</sup> Verizon Comments at 2.

<sup>12</sup> 47 C.F.R. § 51.913(b).

<sup>13</sup> Verizon Comments at 3.

to Teliax ... for 8YY originating' traffic; instead, "[t]hey get paid by Teliax to send us their traffic."<sup>14</sup> As explained herein, Verizon is trying to twist words and confuse concepts in order to persuade the FCC that Teliax is providing Access Services free to other CLECs and interconnected VoIP ("I-VoIP") providers when, in fact, these companies have hired Teliax as their wholesale provider of toll free Access Services to IXCs.

The intended result of Verizon's comment is to confuse the terms "customer" and "service" as used in ordinary conversation and business with certain terms of art in the Commission's rules and Teliax's tariff to mischaracterize a business relationship. Such attempt to mislead the Commission has no place in rulemaking. While neither Teliax nor its counsel have the mind-reading powers of the Roman god Janus, it becomes fairly easy to reason Verizon is likely attempting to obtain the use of Teliax's network for free through B&K by intimating that Teliax's provision of wholesale, tariffed toll free origination is really a situation where Teliax is providing Exchange Access Services to Access Customers without charge. Verizon is seemingly trying to avoid paying for Access Services charges through a twisted interpretation of the access stimulation cases.<sup>15</sup> Providers of wholesale 8YY origination services have absolutely nothing in common with rural LECs working with free conference call providers. Verizon's blatant attempt to confuse the Commission is simply wrong.

It is important to understand the different ways in which Teliax uses the term "customer" and to distinguish between uses in the context of Teliax's services. At times, Teliax uses the term "customer" in reference to those companies, generally other CLECs and I-VoIP service providers, which send Teliax calls dialed to toll free telephone numbers for delivery to the IXC serving the dialed

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<sup>14</sup> *Id.* Verizon adds a footnote to a snippet of Deposition Testimony from Teliax president David Aldworth in 61:18-62:5, *Teliax, Inc. v. AT&T Corp.*, No. 1:15-cv-01472-RBJ, Dkt. No. 68-1 (D. Colo. filed Oct. 21, 2016) ("*Teliax v. AT&T*").

<sup>15</sup> *E.g., Northern Valley Commc'ns, L. L.C. v. At & T Corp.*, 245 F.Supp.3d 1120, 1137 *et seq.* (D.S.D. 2017). "[W]e uphold the FCC's decision that CLECs may not rely on tariffs to charge long-distance carriers for access to CLECs' non-paying customers." *Id.* at 1138, *quoting. Northern Valley Commc'ns, LLC v. FCC*, 717 F.3d 1017, 1019 (D.C. Cir. 2013).

toll free number. Teliix does not provide these entities with any Access Services as defined in Teliix's interstate tariff (Teliix Tariff F.C.C. No. 1 or "Tariff") or in Part 69 of the rules of the FCC (47 C.F.R., Part 69). Instead, Teliix acts as those entities' wholesale provider of Access Services on a contract basis. They are "customers" only in a business sense. Sometimes, Teliix refers to those entities as "partners" but only in a loose sense. No actual partnership is created.

Teliix also uses the term "customer" in reference to those IXC's to which Teliix provides Access Services as defined in Teliix Tariff F.C.C. No. 1 and Part 69 of the FCC's rules. The Tariff defines "customer" as "The person, firm, corporation or other entity which orders the Company's service or receives the Company's service, including but not limited to an Interexchange Carrier, End User, other telecommunications carrier, or provider originating or terminating Toll VoIP-PSTN traffic."<sup>16</sup> "Service" means "The Company's telecommunications Access Services offered on the Company's Network."<sup>17</sup>

"Access Service" or "Switched Access Service" means "Access to the switched network of an Exchange Carrier for the purposes of originating or terminating communications. Access Service is available to carriers as defined herein."<sup>18</sup> Section 69.2(b) of the FCC's rules describes "Access service" as "includ[ing] services and facilities provided for the origination or termination of any interstate or foreign telecommunication." "Local Exchange Carrier" is defined as "Any individual, partnership, association, joint-stock company, trust, governmental entity or corporation engaged in the provision of local exchange telephone service."<sup>19</sup>

Teliix's wholesale customers, CLECs and I-VoIP service providers in connection with a local CLEC, would have the right, under the FCC's rules and their interstate tariffs, to charge switched access, including end office switching, local transport, a toll free DBQ charge and rates for other

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<sup>16</sup> Teliix Tariff F.C.C. No. 1 at Section 1, Definitions and Abbreviations; original page 9.

<sup>17</sup> *Id.* at original page 14.

<sup>18</sup> *Id.* at original page 8.

<sup>19</sup> *Id.* at original page 10.

related access elements, if they provided those services directly to an IXC. However, for business reasons they have elected to use Teliax's network and related wholesale services to provide Access Services to IXCs for toll free calls. Upon seeing their end user customer dial a toll free telephone number, the wholesale customer immediately sends the call to Teliax in Colorado.<sup>20</sup> The wholesale customer does not perform normal switching functions or perform a DBQ.

Upon receipt of the toll free call from its wholesale customer, Teliax performs the first point of end office switching,<sup>21</sup> a DBQ to determine the IXC serving the dialed toll free number and other services and then routes the call to the IXC through an unaffiliated carrier's tandem switch that is interconnected with the serving IXC. Teliax, in turn, bills the IXC (Access Customer) a composite end office charge, which includes switching and transport); a port charge and an 8YY DBQ charge, just as Teliax's CLEC or I-VoIP customer would do if they provided the same services directly.

***B. The Record before the Commission Does not Support Mandatory Bill and Keep***

**1. Evidence Shows the 2011 Transformation Order Failed to Produce Its Predicted Result – Lower Rates for Consumers**

AT&T argues at some length that B&K has helped consumers and would similarly provide additional benefits if extended to toll free calls.<sup>22</sup> However, AT&T offers no evidence whatsoever of

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<sup>20</sup> This is not unlike the way toll and toll free calls were provided before equal access requirements were imposed and implemented. Once a toll or toll free call was dialed, an electromechanical switch immediately transferred the call to a toll center, where the first point of switching occurred.

<sup>21</sup> The Commission should not even consider rules that would not recognize wholesale call origination service that includes end office switching since it previously recognized wholesale switching as a bona fide service. *See, e.g., Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report & Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, at ¶ 504 (2003) (internal footnote omitted) ("Therefore, state commissions should identify those markets in which requesting carriers are not impaired without unbundled local circuit switching because two or more competing carriers, not affiliated with each other or the incumbent LEC, offer wholesale switching service for that market using their own switch.").

<sup>22</sup> AT&T Comments at 10-12.

these benefits but merely recites sections of the *2011 Transformation Order*<sup>23</sup> as if they all came true. However, history demonstrates they did not.

In response to the *18-155 NPRM*,<sup>24</sup> the Competitive Local Exchange Carriers ("CompLECs"), supported by the research and analysis of Dr. Oliver Grawe, demonstrated that the predicted cuts in sent-paid long distance and all-distance calling rates due to the reduction of terminating access to B&K simply did not happen.<sup>25</sup> As Teliix wrote in its reply comments in that proceeding:

However, in practice, the change in access charges did not bring about this result. The CompLECs provide data indicating that prices for long distance and all-distance calling packages did not decrease but, in fact, actually increased despite the cut in access charges. The comments, backed up by Dr. Grawe's expert report, stated "the Producer Price Index ('PPI') reveals rising costs for both wireline toll and wireline all distance (local and long-distance combined) services since 2011."<sup>26</sup>

**2. Because of the IXC's Unsupported Claims, the Commission Needs to Open an Investigation of the IXCs and Obtain Evidence-Specific Comments**

a. Interconnection, Robocalls and Toll Free Numbering Resources

In view of this evidence that the big IXCs pocketed all of the access reductions resulting from the movement of terminating end office access to B&K, before the Commission provides a similar windfall to the big IXCs through 8YY access reform, the Commission should open an investigation into AT&T's and Verizon's pricing and obtain evidence, subject to peer review, evaluating the actual benefits and costs of mandatory B&K for terminating access.<sup>27</sup>

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<sup>23</sup> *Connect America Fund*, *supra*.

<sup>24</sup> *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, Notice of Proposed Rulemaking, WB Docket No. 18-155, FCC 18-68 (rel. June 5, 2018) ("18-155 NPRM")

<sup>25</sup> CompLECs Comments in WC Docket No. 15-155 at 42.

<sup>26</sup> Teliix Reply Comments in WC Docket No. 15-155, *citing* CompLECs Comments at 9.

<sup>27</sup> See Final Information Quality Bulletin for Peer Review, OMB M-05-03 (Dec. 16, 2004), *available at* [https://www.cio.noaa.gov/services\\_programs/pdfs/OMB\\_Peer\\_Review\\_Bulletin\\_m05-03.pdf](https://www.cio.noaa.gov/services_programs/pdfs/OMB_Peer_Review_Bulletin_m05-03.pdf).

Besides the effects on consumers, this investigation and evidence should analyze of network upgrades and network connections between AT&T or Verizon and CLECs. Both AT&T and Verizon regularly complain that they cannot obtain direct connections between CLEC end offices and their long distance points of interconnection ("POIs")<sup>28</sup> when, in fact, they do not request direct connection or even refuse or ignore proposals from CLECs for direct connection.<sup>29</sup> The evidence should include review and analysis of the costs/benefits of a mandatory direct connection between LECs and IXC's when traffic volumes exceed the capacity of four T-1 circuits or some other reasonable proxy based on sound engineering and economics, as proposed by many parties<sup>30</sup>. This analysis should include the assumption that, once the ratio is reached, the carriers would be given two years to implement the direct connection and, in the interim, existing rates would continue to apply. But after that point, the party refusing such interconnection would be responsible for the costs of transporting calls between carriers indirectly (i.e., tandem access charges).

Other subjects appropriate for evidence, such as expert analysis, and peer review include: 1) the effects of B&K on robocalls; 2) the effect of moving 8YY originating access to B&K on the supply of toll free numbers, the possible early exhaustion of the 8YY Service Access Codes ("SACs") and costs

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<sup>28</sup> See, e.g., Comments of AT&T, *In the Matter of Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155 (July 20, 2018) at 5; Comments of Verizon, *In the Matter of Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155 (July 20, 2018) at 5.

<sup>29</sup> T&P Comments at 20. This year, following designation of new Teliax Tandem Switch in the Local Exchange Routing Guide ("LERG"), Verizon established a small (four T1s, or less than 100 channels) direct connection with that Teliax tandem switch. Due to limited capacity that connection is reserved for 1+ dialed calls delivered to Teliax's retail customers or to other CLECs that have similarly subtended the Teliax Tandem. There has been no change in the routing or billing of all other calls between Teliax and Verizon.

<sup>30</sup> Comments of Peerless Network, Inc.; West Telecom Services, LLC; Peninsula Fiber Network, LLC; Alpha Connect, LLC; Rural Telephone Service Company, Inc. d/b/a Nex-Tech; Nex-Tech, LLC; And Tennessee Independent Telecommunications Group, LLC d/b/a Iris Networks, filed in WC Docket No. 10-90 & CC Docket No. 01-92 (Oct. 27, 2017) at 11 and the cases cited therein ("Peerless Network Edge Comments").

for expanding Toll Free SACs beyond 8YY codes. And what other “unforeseen harms” to the public interest might come from moving originating 8YY access to B&K?

b. IP Networks

AT&T’s arguments<sup>31</sup> that moving 8YY originating access to B&K would provide incentives for carriers to move to IP networks are baseless. T&P have all IP networks except for those TDM facilities needed to interconnect with AT&T and other large carriers. Many other CLECs operate similar networks. But both AT&T and Verizon’s toll free networks are still TDM based. Despite seeing their access expenses reduced substantially over time from both pre- and post-*2011 Transformation Order* regulatory changes, they have not invested the savings to replace their outdated networks choosing instead to concentrate investment in wireless networks and unregulated content services.

Many CLECs, including T&P, have made major investments in switch software necessary to handle toll free calls and to ensure their delivery to AT&T and Verizon over TDM facilities. These investments include not only additional software in CLEC switches but also other Signaling System 7 (“SS7”) equipment such as Service Transfer Points (“STPs”) and Service Control Points (“SCPs”),<sup>32</sup> both of which have capital and recurring operating costs associated with them. Further, Peerless’s and Teliix’s participation in the wholesale 8YY origination market utilizes switch capacity that is then not available for other services. T&P also incur monthly charges from other carriers (e.g., for connection with their STPs) when they exchange toll free traffic with such carriers.

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<sup>31</sup> AT&T Comments at 11.

<sup>32</sup> Teliix has even become an owner-operator of the SOMOS 8YY database service in order to deliver higher quality service and more options to its retail and wholesale customers than if it merely resold another facilities-based carrier’s DBQ service.

c. Wireless Carriers, i.e., Verizon and AT&T

Another subject for investigation and peer-reviewed analysis should be the impact of the FCC's rules prohibiting wireless carriers from charging originating access.<sup>33</sup> It is commonly known within the Industry that wireless carriers do not perform a DBQ on the toll free calls dialed by their end user customers. They have not invested in the hardware and software necessary to perform 8YY DBQs because FCC rules do not allow them to recover those costs. And which two companies operate America's largest wireless carriers? AT&T and Verizon, of course. If Verizon and AT&T will not invest in their wireless networks to obtain capacity or even purchase wholesale services to perform toll free queries because they cannot charge IXC's for the service, why do they argue that CLECs (and many smaller ILECs) should spend the money to perform queries for free? Once again, Verizon's and AT&T's outrageous advocacy destroys their credibility.

d. Disputes and Litigation

Would eliminating all access charges and other forms of intercarrier compensation reduce intercarrier disputes and litigation, as claimed by AT&T and Verizon?<sup>34</sup> In their "perfect world" where they get to use other carriers' networks for free and, therefore, there is nothing to dispute, maybe. But in a real world, where CLECs and small ILECs may not be able to stay in business if they are required or forced through IXC self-help to allow other carriers free use of their network, the answer is "no." Therefore, another topic for investigation and peer-reviewed analysis is: Whether small LECs can survive without intercarrier compensation or major infusions of Universal Service funds? And if the number of CLECs declines substantially, what is the effect on competition?

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<sup>33</sup> *2011 Transformation Order*, at ¶. 978; 47 CFR § 20.15(c) ("Commercial mobile radio service providers shall not file tariffs for ... interstate access service ...").

<sup>34</sup> *See* AT&T Comments at 11; *see also* Verizon Comments at 2.



The *2011 Transformation Order* predicted the movement of access to B&K would also reduce intercarrier disputes and litigation.<sup>35</sup> Obviously, that prediction turned out to be false, not just because legitimate or credible disputes that have been a part of the Industry for decades, but because IXCs continue to challenge lawful access and intercarrier compensation charges. Likewise, contrary to the big IXCs' claims, disputes and litigation have not been limited to the very few cases where a LEC has purposely engaged in fraudulent behavior.<sup>36</sup>

Peerless has been the multi-million dollar victim of Verizon's refusal to pay for the use of Peerless's network and the services provided by Peerless to Verizon. Indeed, a federal court found Verizon's six-year refusal to pay Peerless so inequitable that, despite making primary jurisdiction referrals to the Commission, the court refused to stay the case pending Commission action, granted Peerless summary judgment on some claims and directed Verizon to pay Peerless \$48.5 million.<sup>37</sup>

Disputes and litigation will continue as long as the AT&T and Verizon continue to have an incentive to mischaracterize or mislead to avoid paying access charges. And in court too, the big IXCs make wildly inconsistent arguments. For example, despite contending that Teliix should receive not its tariff rates for originating end office, port and DBQ functions, but rather, AT&T-calculated "national average" tandem and DBQ rates, AT&T pled Teliix's claims were barred, at least in part, by the filed rate doctrine.<sup>38</sup> While a party to a lawsuit has some leeway in pleading under the Federal Rules of Civil Procedure, this "anything goes" approach to avoid paying tariff charges shows that access reforms have not ended billing disputes and that AT&T will say anything to avoid tariff rates.

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<sup>35</sup> See *2011 Transformation Order*, at ¶ 930

<sup>36</sup> See, e.g., *All American Tel. Co., Inc. v. AT&T Corp.*, Opinion & Order, Case No. 07cv861 (S.D.N.Y. Sept. 10, 2018) (granting AT&T summary judgment against a CLEC established to provide "services exclusively to chat line/conference call providers in Utah and Nevada" at very high prices). *Slip op.* at 5.

<sup>37</sup> *Peerless Network, Inc. v. MCI Comm'ns Serv., Inc.*, No. 14 C 7417 (N.D. Ill. March 16, 2018) ("*Peerless I*") and Memorandum Opinion & Order (filed July 27, 2018) ("*Peerless II*").

<sup>38</sup> *Teliix v. AT&T*, AT&T Corp. and BellSouth Long Distance, Inc.'s Answer To Plaintiff Teliix, Inc.'s Second Amended Complaint and AT&T Corp.'s First Amended Counterclaims Against Teliix, Inc., Doc. 55, Fourth Defense.

e. Making End User Customers Pay for Toll Free Calls

When envisioning the big IXCs' preferred world of B&K, one must remember that in such a world AT&T and Verizon would have end user customers pay to make toll free calls.<sup>39</sup> What might that world look like?

The State of North Carolina, as well as the federal government, local governments and nonprofits, made heavy use of toll free numbers during recent Hurricane Florence. For example, the North Carolina Housing Finance Agency's website listed hurricane resources.<sup>40</sup> That site listed a number of entities that could provide help and contact information, either directly or through links to that webpage listed toll free numbers for contact. These included:

- North Carolina Department of Public Safety - 888-892-XXXX<sup>41</sup>
- NC Department of Health and Human Services - 800-662-XXXX
- FEMA - 800-621-XXXX – TTY 800-462-XXXX
- NCHousingSearch.org - 877-428-XXXX
- United Way - 888-892-XXXX
- North Carolina Bar Association - 833-242-XXXX
- WRAL TV (How to Help)<sup>42</sup>

T&P have no information as to exactly how many people in North Carolina and elsewhere called toll free numbers before, during and after Hurricane Florence hit the Tar Heel State. But we submit that no person who dialed any of these numbers hesitated to call because of concerns they would have to pay for the call. All American residents beyond young children knows that they do not have to pay to make a toll free call. And every government agency that subscribes to toll free service never seems to hesitate to pay for all callers to dial their 8YY numbers.

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<sup>39</sup> See AT&T Comments at 2; Verizon Comments at 1.

<sup>40</sup> <https://www.nchfa.com/about-us/hurricane-resources> (September 21, 2018).

<sup>41</sup> The Department also included a webpage that provided links to other entities that could help hurricane victims obtain replacement copies of documents lost in flooding. Many of these agencies and other entities advertised toll free numbers as well.

<sup>42</sup> Raleigh TV station WRAL created a webpage providing information and contacts for those individuals and businesses that wanted to contribute money or otherwise help hurricane victims. Many of these contacts were through toll free numbers.

Yet AT&T, Verizon and the many large companies that constitute the Ad Hoc Telecommunications Users Council ("Ad Hoc") want to end toll free calling as the American public knows it. They want to make ordinary people pay to make toll free calls. But what would have happened in North Carolina had the public been required to pay to make toll free calls in an emergency? We can only speculate that many people would have dialed for help anyway. But it is certain that some people, fearful of incurring costs or just not understanding what to do, would not have called these "sort of toll free numbers." And some of those individuals would have failed to obtain critical help and suffered even more. But what matter to AT&T, Verizon and Ad Hoc? They want end users to pay because they want free Access Service. The true question is: Will the Commission look beyond this sheer greed and callous disregard for ordinary people and conclude that the public interest demands that toll free calling continues to be toll free calling?

Adopting AT&T, Verizon and Ad Hoc's mutual position that end users should pay to make toll free calls, when many end user customers have flat-rate long distance or all distance calling packages, turns market expectations on their ear. Forcing end users to pay to dial 8YY numbers also devalues toll free calling. Moreover, both consumers and lawmakers are going to revolt at the impacts of ending toll free calling at the same time most ordinary long distance calls have become part of "all-you-can-eat" pricing plans. That makes no sense and cannot be explained to the public. T&P submit that this result is right out of a *Bizzaro Superman* comic book. And, as rational public policy, it fails down the line.

### ***C. DBQ Rates***

The push by some parties for a single nationwide DBQ rate is not supported by evidence and not in the public interest. There has been no evidence that costs are uniform among carriers operating across the nation. As explained earlier, CLECs, including T&P, have made considerable investment in network equipment and software to provide DBQ service, along with operating expenses and opportunity costs. Moreover, their demand levels are less than those of the major carriers. Decades

of FCC ratemaking should recognize that rates for some carriers would naturally be higher than those for others. At a bare minimum, rate caps should be set regionally and consider the size of each facilities-based CLEC.

AT&T focuses on the differences among DBQ rates by carriers and argues there should be a single rate that is transitioned to B&K.<sup>43</sup> Included in AT&T's presentation is a listing of a \$0.0023 per DBQ rate from AT&T (Ameritech).<sup>44</sup> The *ex parte* presentation is misleading and inaccurate, however, since AT&T's DBQ rate consists of multiple parts, such that carriers can pay as much as \$0.0043 per DBQ in the old Ameritech territory. Similar multipart tariff rates can be found with AT&T Pacific Bell Telephone Company and BellSouth Telecommunications.<sup>45</sup>

Peerless, on the other hand, has an "all-in" rate that depends on the region and/or state.<sup>46</sup> If the Commission does act in this area, it must first make sure that it is regulating on an "apples-to-apples" basis.

### **1. Volume Discounts**

An even better solution would be for the FCC to require carriers imposing a toll free DBQ rate to include a volume discount structure. The more calls a carrier queries calls for an IXC, the lower that IXC's rate goes. Such an approach would allow facilities-based LECs offering DBQ service to recover their costs but also ensure it would not experience a financial windfall as a result of high-volume calls to a particular IXC. Indeed, the adoption of a rate structure with volume discounts could well make toll free aggregation by wholesale providers work to lower an IXC's DBQ costs below what they might be if multiple VoIP providers and their CLEC partners performed their own DBQs.

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<sup>43</sup> *E.g.*, Letter from Matthew Nodine, AT&T to Marlene Dortch, FCC, filed in WC Docket Nos. 10-9- & 07-135 and CC Docket No. 01-92, February 12, 2018. The letter, which contained an attachment presented to Commission staff, memorialized a February 8, 2018 *ex parte* meeting.

<sup>44</sup> *Id.*, Attachment at 8.

<sup>45</sup> AT&T ILEC Interstate Access Tariffs, attached hereto as Exhibit "A."

<sup>46</sup> Peerless Interstate Access Tariff, attached hereto as Exhibit "B."

## **2. Multiple Queries on a Single Call**

Both GCI Communication Corp. ("GCI") and West Telecom Services, LLC ("West") explain that, while there should be but a single DBQ on most calls, there are valid reasons why more than one query is necessary. For example, when a carrier does not use SS7 technology and, as a result, there is no information identifying the serving IXC, an additional DBQ would be necessary.<sup>47</sup> West makes the same basic point that an additional query is needed to identify the serving IXC when the call lacks proper identifying information.<sup>48</sup> Commission rules must permit an additional query and DBQ charge when a call lacks proper carrier identification information in order to ensure the call is properly completed. This is especially fair since the major reason SS7 is needed on toll free calls is the fact that neither AT&T nor Verizon's toll free network is IP based.

Additionally, Peerless has found when an 8YY call is handed to another provider, there is no reliable method of determining whether the query is accurate or even relevant. Therefore, out of an abundance of caution and as a safeguard against call failures (which results in the toll free subscriber not receiving all of its calls), a number of carriers re-query the call. As a business matter, it is better to re-query than risk a 2-5% call failure rate. Of course, if the majority of toll free subscribers were to inform the Commission that a 2-5% call failure rate is truly acceptable to them, it might well be appropriate for a rule prohibiting multiple queries.

We provide another example. When a previously queried call crosses state boundaries but is an intraLATA call, such that another Carrier Identification Code ("CIC") controls the call, a second query is needed. For example, assume a consumer in Bellevue, Iowa dials a toll free number of a business in Rock Island, Illinois. This is an interstate call but also an intraLATA call. Under Commission regulation, this call might be served by a different carrier (because it is interstate, intraLATA) than if the call were dialed to a toll free number of a company located in the Chicago suburbs (an interstate,

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<sup>47</sup> GCI Comments at 14.

<sup>48</sup> West Comments at 18.

interLATA calls). The first query is apt to focus solely on the interstate nature of the calls but is likely to miss the intraLATA nature of the same call. Again, do toll free subscribers and their carriers want misrouted calls? If so, they need to speak up now.

The Commission must also recognize there are different carrier types (CLEC, I-VoIP, wireless, cable) sending DBQ in many different formats. If the FCC mandates a sole query in all instances, then must also specify exactly how DBQ information is presented from one operator to another. And, of course, failing to follow the technical rules would need to be an unjust and unreasonable act by a carrier or entity treated as a carrier.

Finally, some carriers save or cache DBQ data to reduce operating expenses. But as with any cache of data, over time it becomes less and less accurate. Toll free subscriber ABC may switch its service from IXC-1 to IXC-2 but another carrier's data file would continue to link IXC-1 to the dialed 8YY number. This real life situation will result in misrouted calls unless a correcting DBQ is performed. The truth of the matter is that DBQs are critical to proper routing of toll free calls. Yet again, we see AT&T, Verizon and Ad Hoc so focused on getting something for nothing that they would prefer to provide or receive inferior service. That just does not make sense.

***D. Providers of Wholesale 8YY Origination Service, Including Tandem Operators, Are Necessary for the Operation of the Service***

It is reasonably certain that, in the event the FCC fails to recognize differences between sent-paid traffic and toll free traffic, by moving originating access to B&K for both services, those CLECs providing wholesale 8YY origination service will ultimately file Section 214 applications and leave the business.<sup>49</sup> Assuming *arguendo* that CLECs and smaller ILECs continue to offer retail TDM toll free calling, this would mean that only the large ILECs will be able to process indirectly routed toll free calls. This includes toll free calls from Verizon Wireless and AT&T Mobility end users since those

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<sup>49</sup> See T&P Comments at 29.

companies do not perform DBQs. (Note that the IXCs cannot handle this traffic because a DBQ is itself necessary to identify the IXC servicing the dialed 8YY number.)

The FCC must, therefore, be assured that the large ILECs can handle the traffic volumes. Given the presumed growth in toll free traffic based on the consumption of toll free telephone numbers<sup>50</sup> and the lack of any evidence that the large ILECs have invested in more TDM-tandem capacity, which is required because of the large IXCs' refusal to transition their TDM networks, it is quite possible they alone cannot handle toll free traffic volumes. And, indeed, since the Commission's policy is to encourage TDM replacement with IP technology, it would be leading a march backwards to the 1980s and 1990s when today's TDM networks were state of the art.

***E. The Cry of "Fraud" and "Robocalls" Is an Empty Shibboleth Designed to Defraud Other Carriers of Valid Charges for Services Rendered***

In 1898, William Randolph Hearst, publisher of the *New York Journal*, desiring to increase circulation of his paper, is reputed to have coined the phrase "Remember the Maine" as part of his sensationalist journalism. He was not alone; his competitors, especially Joseph Pulitzer of the *New York World*, also pushed war with Spain to bolster circulation and market share. At one level, Hearst and his rivals were correct. The *U.S.S. Maine* had exploded and sank under suspicious circumstances in Havana Harbor. Further, nearly three-quarters of her crew died. An investigation was necessary and one occurred. But the desire to learn the truth about the tragedy and its cause was soon pushed to the background by sensationalist journalism and shibboleths designed to egg the Nation to go to war with Spain. Each newspaper used the tragedy of the sinking of the *U.S.S. Maine* for financial gain without regards to the facts.

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<sup>50</sup> See T&P Comments at 20. As recommended by T&P, the FCC needs to require IXCs offering toll free service to produce several years of toll free traffic volumes that, in turn, can be aggregated and published so that better data is available to the Industry, the public and those writing and reviewing peer-reviewed analyses.

The big IXCs similarly use the cries of “fraud” and “robocalls” with respect to toll free calling. Indeed, the *2011 Transformation Order’s* rule changes bringing terminating end office to B&K and, thus, making robocalling much less expensive has functioned as an engraved invitation to robo-dialers to plague the public, including toll free subscribers. However, AT&T’s and Verizon’s response to these issues is to seek to extract free service from CLECs rather than requesting the FCC undertake an appropriate investigation of the impact of these issues and ways to mitigate those effects.

**1. If Toll Free Service Is a Den of Thieves, Why Is It Growing?**

AT&T and Verizon would like the Commission to believe that toll free services is effectively a virtual “Den of Thieves” but there is no evidence in the record that fraudulent and robo-dialed calls constitute a significant portion of toll free calls or indeed even the portion they do comprise. If fraud and auto-dialed calls were virtually ever-present as AT&T, Verizon and Ad Hoc insist, businesses, government agencies and nonprofits would be moving away from the use of toll free numbers. However, it certainly appears that the use of toll free numbers and, presumably, the number of toll free calls are on the uptick. The FCC cannot reasonably move forward with access reforms unless it knows the facts about fraud and the auto-dialing of 8YY numbers. T&P urge the Commission to obtain and publish accurate and up-to-date information about fraud and robo-dialing toll free numbers and to seek further comments on these issues before proceeding with 8YY access reform.

**2. Commission Rules Must Require IXCs to Work with Upstream Carriers to Reduce Fraud**

Similarly, existing Commission rules do not require carriers to work together to reduce fraud and robo-dialing. There is no FCC directive that requires IXCs to report specifics about fraudulent and robo-dialed calls to upstream carriers and for those upstream carriers to work with reporting carriers to identify; investigate; and, if appropriate, block bad calls. As a result, T&P’s experience has been that the IXCs do not cooperate to identify and investigate calls. Therefore, we further urge the Commission to adopt rules requiring carrier disclosures and cooperation to stop these calls to the greatest extent possible.



### **3. Verizon's Business Practices Are Designed to Obtain Free Access Service despite Its Rhetoric about Fraud**

In 2015, Teliax and Verizon signed an agreement settling a dispute and setting prices for 8YY originated traffic sent to Verizon. The agreement also contained provisions prohibiting Teliax from sending fraudulent calls, including auto-dialed calls, to Verizon. Over the course of the agreement, the parties reported and investigated possible "bad" traffic and took appropriate action. In addition, Verizon conducted several reviews/audits of Teliax traffic, from which Verizon raised no charges of significant fraud. Then in 2017, as Teliax's wholesale business grew along with overall toll free calling, Verizon began challenging both new traffic and prior traffic, including the traffic that had been previously audited by Verizon, as "'the product of fraud or illegal activity,' including 'auto-dialed 8YY traffic.'"<sup>51</sup> Further, Verizon also decided that the calls it had accepted, billed its subscribers for and paid the contract rate to Teliax were now the produce of "fraud an illegal activity," including those calls previously audited and considered billable traffic.

What seems to be the case is that, Verizon has an access budget or estimate for each carrier delivering a significant amount of traffic to Verizon. When traffic volumes increase beyond projections, Verizon begins to challenge the traffic and couches its challenge with the shibboleth of "fraud, illegal activity and robocalls." After being challenged by Verizon about an increase in traffic volumes, Teliax explained, in September 2017, that the increase was driven by Teliax's acquisition of two new wholesale "partners" that shifted their calls from other CLECs to Teliax. Such shift in wholesale providers would cause Verizon to see a reduction in access billing from the two affected CLECs.<sup>52</sup> But

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<sup>51</sup> Letter from William S. Cornell, Esq., counsel for Verizon, to John S. Young, Esq., counsel for Teliax, dated December 15, 2017, attached hereto as Exhibit "C." The driver for Verizon's action was a "spike in traffic (and billings)" that Verizon noticed in the summer of 2017. *Id.*

<sup>52</sup> Email message from David Aldworth, Teliax, to Lauren N. Petty, Verizon, dated September 29, 2017. Because this message contains confidential proprietary information belonging to other telecommunications carriers, which is protected by Section 222(a) of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. § 222(a), Teliax will file this message with the Commission as protected information not subject to public disclosure.

facts are inconvenient and irrelevant to Verizon when it implements its strategy to avoid payment of tariff or contract rates. It's much easier to speak in shibboleths.<sup>53</sup>

#### **4. AT&T too Wants Traffic It Calls Fraudulent to Be Delivered**

AT&T too likes the fraud-robocall shibboleth.<sup>54</sup> But the facts indicate the Company actually believes fraud is much smaller than AT&T's advocacy to the FCC suggests. For example, in the Teliax lawsuit against AT&T for nonpayment of tariff charges<sup>55</sup> AT&T employee and fraud specialist Adam Panagia gave deposition testimony that he contacted Teliax a number of times about alleged fraud on international-originated calls.<sup>56</sup> Mr. Panagia then described his contact and Teliax's response. "It wasn't a discussion. It was just a referral. We send an alert to Teliax[s] NOC. And they handle it accordingly with their customer."<sup>57</sup> The deposition continued: "Is that common within the industry to see these alerts? Absolutely."<sup>58</sup> This evidence does not show fraud overwhelms toll free calling. Rather, it is a part of the business where carriers work (or are supposed to work) together to minimize fraud.

Mr. Panagia indicated that calls with non-compliant Caller ID information (a telephone number in improper format) were often associated with spoofing, a form of fraud, and that Teliax sent AT&T calls with non-compliant Caller ID information. He further stated that, while those calls are not wanted by AT&T, Mr. Panagia was unaware that AT&T ever requested Teliax to block those calls.<sup>59</sup> AT&T

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<sup>53</sup> It is also quite puzzling to understand why Ad Hoc continues to buy AT&T's and Verizon's arguments that they are the "protectors of good," given the record in this and other dockets demonstrating the big IXCs did not flow through access savings from moving terminating access to B&K and that the big IXCs have most certainly billed Ad Hoc's members for 8YY calls that the big IXCs now claim to be fraudulent.

<sup>54</sup> See AT&T Comments at 9.

<sup>55</sup> *Teliax v. AT&T supra*.

<sup>56</sup> Deposition of Adam Panagia in *Teliax v. AT&T*, December 3, 2015, at 43:2-23. Attached hereto as Exhibit "D."

<sup>57</sup> *Id.* at 43:25-44:4.

<sup>58</sup> *Id.* at 44:9-11.

<sup>59</sup> Panagia Deposition at 56:2-18.

access review executive Kimberly Meola testified in her deposition in the same lawsuit that AT&T wants all 8YY calls bound for its CICs to be delivered unless it identifies specific calls for blocking.<sup>60</sup>

In sum, neither AT&T nor Verizon operate consistently with their advocacy rhetoric. They know that the volume of actual fraud is small but claim it overwhelms the Industry simply as an attempt to gain mandatory B&K or avoid lawful access charges. Their conduct is no different than that of William Randolph Hearst and Joseph Pulitzer 120 years ago. They all use empty shibboleths to advance their economic goals instead of providing factual analysis.

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<sup>60</sup> Deposition of Kimberly Meola, in *Teliax v. AT&T*, December 3, 2015, at 40:18-41:3. Attached hereto as Exhibit "F." See also, Deposition of Alison Miller, in *Teliax v. AT&T*, December 2, 2015, at 73:9-74:19. Ms. Miller works in Ms. Meola's organization and has reviewed Teliax's bills to AT&T. Attached hereto as Exhibit "G."

### **III. CONCLUSION**

As stated in their Comments, T&P again urge the Commission to: 1) make it clear that, in order for a customer to withhold payment of access charges, it must contemporaneously file a complaint against those rates with the FCC or a court of proper jurisdiction; 2) presume large IXCs will pocket any savings from moving 8YY access to B&K; 3) not adopt benchmarking or other rules that would prevent CLECs from recovering their actual costs for providing access; 4) not prevent CLECs from offering profitable wholesale services, including those for 8YY toll origination; and 5) should the FCC require CLECs to make direct interconnections to IXCs, it should also require the same of CMRS providers.

Respectfully submitted,  
Telix, Inc. and Peerless Network, Inc.

By /s/ Robert H. Jackson  
Robert H. Jackson  
Alexander I. Schneider  
Marashlian & Donahue, PLLC  
1420 Spring Hill Road  
Suite 401  
Tysons, VA 22102  
703-714-1300  
rhj@commlawgroup.com  
ais@commlawgroup.com

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